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5

6 **UNITED STATES DISTRICT COURT**
7 **CENTRAL DISTRICT OF CALIFORNIA**

9
10 JAMES R. GLIDEWELL DENTAL
CERAMICS, INC. DBA
11 GLIDEWELL LABORATORIES, a
California corporation,
12 Plaintiff

Case No. SACV11-01309-DOC(ANx)

13 vs.
14 KEATING DENTAL ARTS, INC., a
California corporation,
15
16 Defendant.

PLAINTIFF'S/COUNTERCLAIM-
DEFENDANT RESPONSES TO
DEFENDANT'S FIRST SET OF
REQUEST FOR ADMISSIONS
(NOS. 1 - 26)

18 KEATING DENTAL ARTS, INC., a
California corporation,
19 Counterclaim-Plaintiff,
20 vs.
21 JAMES R. GLIDEWELL DENTAL
CERAMICS, INC., DBA
22 GLIDEWELL LABORATORIES, a
California corporation, and
23 DOES 1 THROUGH 5, inclusive,
24 Counterclaim-Defendants.)

27 Plaintiff Glidewell Laboratories hereby responds to Defendant Keating
28 Dental Arts, Inc. First Set of Request for Admissions as follows:

GLIDEWELL LABORATORIES PRELIMINARY STATEMENT

3 Glidewell Laboratories has not completed its investigation relating to
4 this action, has not completed discovery in this action, and has not completed
5 preparation for trial. As discovery proceeds, facts, information, evidence,
6 documents and things may be discovered that are not set forth in these
7 Responses, but which might have been responsive to Keating Dental Arts,
8 Inc.'s Requests. The following Responses are based on Glidewell
9 Laboratories knowledge, information, and belief at this time, and are complete
10 as to Glidewell Laboratories best knowledge at this time. These responses
11 were prepared based on Glidewell Laboratories good faith interpretation and
12 understanding of the individual Requests and are subject to correction of
13 inadvertent errors or omissions, if any. These Responses are provided without
14 prejudice to subsequent revision or supplementation based upon any
15 information, evidence, and/or documentation that hereinafter may be
16 discovered. Glidewell Laboratories reserves the right to refer to, conduct
17 discovery with reference to, or offer into evidence at the time of trial, any
18 facts, evidence, documents and things developed during the course of
19 discovery and trial preparation, notwithstanding the reference to facts,
20 evidence, documents and things in these Responses.

21 To the extent that any Request seeks documents and communications
22 that are also sought by or identified pursuant to any other Request, Glidewell
23 Laboratories declines to produce or identify multiple copies of such
24 documents and communications, and states that each document and
25 communication produced or identified pursuant to any Request is also
26 produced and identified pursuant to every other Request to which it is or may
27 be responsive.

1 To the extent that any Request seeks documents and communications
 2 that are protected by the attorney-client privilege, attorney work product
 3 doctrine, or any other applicable privilege or immunity, Glidewell
 4 Laboratories declines to produce such documents and communications, which
 5 would include, without limitation:

6 1. All documents and communications that constitute or record
 7 correspondence or other communications between counsel for
 8 Glidewell Laboratories, or its agents and employees, and Glidewell
 9 Laboratories, or its agents and employees, regarding this action;
 10 2. All documents and communications prepared for use in this
 11 litigation, including, but not limited to, notes, memoranda, draft
 12 pleadings, and correspondence prepared by, at the direction of, or for
 13 review by counsel for Glidewell Laboratories; and
 14 3. All documents and communications that constitute or record
 15 correspondence or other communications between Glidewell
 16 Laboratories and counsel for Glidewell Laboratories.

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18 **GLIDEWELL LABORATORIES GENERAL OBJECTIONS TO**
 19 **KEATING DENTAL ARTS, INC.'S REQUEST FOR ADMISSIONS**

20

21 Glidewell Laboratories objects to Keating Dental Arts Inc.'s Requests in
 22 their entirety to the extent that they seek documents and communications that
 23 are not relevant to the subject matter of this litigation and are not reasonably
 24 calculate to lead to the discovery of admissible evidence. Glidewell
 25 Laboratories further objects to this Request as calling for the production of
 26 privileged, work-product protected, or otherwise non-discoverable
 27 information. No such information will be produced. By agreeing to search for
 28

1 or produce responsive information, or by producing responsive information,
 2 Glidewell Laboratories does not admit competence, relevance, materiality, or
 3 admissibility of such information or the information contained therein.
 4 Glidewell Laboratories specifically reserves its rights to object to the use of
 5 such information on any grounds, including irrelevance and/or inadmissibility.
 6 Glidewell Laboratories' responses are made subject to and without waiving
 7 any objections as to competence, relevance, materiality, or admissibility.

8 Glidewell Laboratories objects to Keating Dental Arts Inc.'s Request in
 9 its entirety to the extent that it calls for the production of documents that are
 10 protected from disclosure by attorney-client privilege and/or attorney work
 11 product doctrine, and/or any other applicable privilege or immunity.

12 Glidewell Laboratories objects to Keating Dental Arts Inc.'s Request in
 13 its entirety to the extent that it is overly broad and unduly burdensome.

14 Glidewell Laboratories reserves the right to amend or supplement its
 15 responses to Keating Dental Arts Inc.'s Request with additional information
 16 pursuant to continuing discovery.

17 Glidewell Laboratories objects to Keating Dental Arts Inc.'s Requests in
 18 their entirety to the extent that they seek private, privileged, and/or
 19 confidential commercial, financial, and/or proprietary business information.

20 Glidewell Laboratories objects to Keating Dental Arts Inc.'s Requests in
 21 their entirety to the extent that they seek documents and communications, the
 22 disclosure of which would constitute an unwarranted invasion of the affected
 23 persons' constitutional, statutory, and/or common law rights of privacy and
 24 confidentiality.

25 Glidewell Laboratories objects to Keating Dental Arts Inc.'s Request in
 26 its entirety, as well as each Request and concomitant definition and
 27 instruction, as unduly burdensome and oppressive, to the extent each Request
 28

1 and concomitant definition and instruction purports to required Glidewell
2 Laboratories to identify all documents and communications related to a
3 particular topic or issue.

4 Glidewell Laboratories objects to the definition of "YOU", "YOUR",
5 "PLAINTIFF" as overly broad, unduly burdensome, vague and ambiguous,
6 and oppressive, and because it imposes burdens on Glidewell Laboratories
7 beyond those required by the Federal Rules to the extent it would require
8 Glidewell Laboratories to search for and produce documents that are not
9 within its possession, custody, or control.

10 Glidewell Laboratories objects to Keating Dental Arts Inc.'s Request in
11 its entirety, as well as each Request, to the extent it calls for information that
12 "refer[s]" or "relate[s]" or "constitute[s]" or "concern[s]" or "support[s]" or
13 "dispute[s]" or "reflect[s]" or is "relevant to" or is "related to" a particular topic
14 on the ground that gathering all documents containing any reference of
15 relationship to a particular topic is unduly burdensome and out of proportion
16 to the documents' potential relevance.

17 All General Objections are incorporated by reference into each
18 Response as though set forth fully therein.

19
20 **PLAINTIFF'S COUNTERCLAIM-DEFENDANT RESPONSES**
21 **TO DEFENDANT'S FIRST SET OF REQUESTS FOR**
22 **ADMISSIONS (NOS. 1-26)**
23

24 **REQUEST FOR ADMISSION NO. 1:**

25 Admit the mark BRUXZIR was, at least in part, adopted to suggest that
26 the product is useful for bruxers or the treatment of bruxism.
27
28

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

2 Plaintiff admits that the mark BRUXZIR was, at least in part, adopted to
3 suggest that the product is useful for bruxers. Otherwise the request is denied.
4

5 **REQUEST FOR ADMISSION NO. 2:**

6 Admit the mark BRUXZIR was, at least in part, adopted to suggest that
7 the product is composed of zirconia.
8

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

10 Admitted.
11

12 **REQUEST FOR ADMISSION NO. 3:**

13 Admit that bruxers are at least one type of end users for the product that
14 Glidewell sells under the BRUXZIR mark.
15

16 **RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

17 Admitted.
18

19 **REQUEST FOR ADMISSION NO. 4:**

20 Admit that the product Glidewell sells under the BRUXZIR mark is
21 intended for bruxers.
22

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

24 Denied.
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1 **REQUEST FOR ADMISSION NO. 5:**

2 Admit that the product Glidewell sells under the BRUXZIR mark is
3 suited for bruxers or teeth grinders who need a dental restoration.

4

5 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

6 Objection – the word “suited” is ambiguous in this context. Plaintiff
7 admits that the BRUXZIR product is suitable for bruxers or teeth grinders who
8 need a dental restoration.

9

10 **REQUEST FOR ADMISSION NO. 6:**

11 Admit that the product Glidewell sells under the BRUXZIR mark is
12 marketed to dentists for use by bruxers in treating bruxism.

13

14 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

15 Denied.

16

17 **REQUEST FOR ADMISSION NO. 7:**

18 Admit that Glidewell has communicated with Assured Dental Lab
19 (“Assured”) in Portland, Oregon claiming Assured’s use of the mark “ZBrux”
20 infringes Glidewell’s trademark BRUXZIR.

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22 **RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

23 Admitted.

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1 **REQUEST FOR ADMISSION NO. 8**

2 Admit Glidewell has communicated with Showcase Dental Laboratories
3 ("Showcase") in Port Charlotte, Florida claiming Showcase's use of the mark
4 "Zir-Bruxer Crown" infringes Glidewell's trademark BRUXZIR.

6 **RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

7 Admitted.

9 **REQUEST FOR ADMISSION NO. 9:**

10 Admit that the word "bruxer" is a term used in the dental industry to
11 identify a person with bruxism or who bruxes.

13 **RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

14 Admitted.

16 **REQUEST FOR ADMISSION NO. 10:**

17 Admit that the word "bruxer" is a generic word in the dental industry.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

20 Admitted.

22 **REQUEST FOR ADMISSION NO. 11:**

23 Admit that "bruxer" and BruxZir" are pronounced the same.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

26 Denied.

1 **REQUEST FOR ADMISSION NO. 12:**

2 Admit that “bruxer” and BruxZir” are phonetically similar.

3

4 **RESPONSE TO REQUEST FOR ADMISSION NO. 12:**

5 Objection – the term “phonetically similar” is vague and ambiguous,
6 therefore Denied.

7

8 **REQUEST FOR ADMISSION NO. 13:**

9 Admit that “bruxer” and BruxZir” are phonetically equivalent.

10

11 **RESPONSE TO REQUEST FOR ADMISSION NO. 13:**

12 Denied.

13

14 **REQUEST FOR ADMISSION NO. 14:**

15 Admit that the first syllable of BRUXZIR was taken from the same root
16 as “bruxer”.

17

18 **RESPONSE TO REQUEST FOR ADMISSION NO. 14:**

19 Admitted.

20

21 **REQUEST FR ADMISSION NO. 15:**

22 Admit that the second syllable of BRUXZIR was taken from the first
23 syllable of “zirconia” or “zirconium”.

24

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 15:**

26 Admitted.

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1 **REQUEST FOR ADMISSION NO. 16:**

2 Admit that BRUXZIR was intended to sound the same or similar to
3 "bruxer".
4

5 **RESPONSE TO REQUEST FOR ADMISSION NO. 16:**

6 Denied.
7

8 **REQUEST FOR ADMISSION NO. 17:**

9 Admit Glidewell has communicated with Authentic Dental Laboratory,
10 Inc. ("Authentic") in San Antonio, Texas claiming Authentic's use of the mark
11 "Brux Crown" infringes Glidewell's trademark.
12

13 **RESPONSE TO REQUEST FOR ADMISSION NO. 17:**

14 Admitted.
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16 **REQUEST FOR ADMISSION NO. 18:**

17 Admit that a registered trademark exists for BRUX-EZE in association
18 with dental appliances.
19

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 18:**

21 Admitted.
22

23 **REQUEST FOR ADMISSION NO. 19:**

24 Admit that a registered trademark exists for BRUXGUARD in
25 association with dental mouth guards for medical purposes.
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1 **RESPONSE TO REQUEST FOR ADMISSION NO. 19:**

2 Admitted.

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4 **REQUEST FOR ADMISSION NO. 20:**

5 Admit that a registered trademark exists for Dr. BRUX associated with
6 surgical, medical, dental and veterinary apparatuses and instruments.

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8 **RESPONSE TO REQUEST FOR ADMISSION NO. 20:**

9 Admitted.

10

11 **REQUEST FOR ADMISSION NO. 21:**

12 Admit that a registered trademark exists for BRUX-CHECKER
13 associated with plastic material for producing dental diagnostic tools.

14

15 **RESPONSE TO REQUEST FOR ADMISSION NO. 21:**

16 Admitted.

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18 **REQUEST FOR ADMISSION NO. 22:**

19 Admit that a trademark application exists for BRUX XXX associated
20 with apparatus and instruments for diagnosis or for treatment of bruxism.

21

22 **RESPONSE TO REQUEST FOR ADMISSION NO. 22:**

23 Admitted.

24

25 **REQUEST FOR ADMISSION NO. 23:**

26 Admit that a trademark application exists for BRUXQuickSplint
27 associated with dental bite trays.

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 23:**

2 Admitted.

3

4 **REQUEST FOR ADMISSION NO. 24:**

5 Admit that a trademark application exists for BRUX BUSTER
6 CUSTOM NIGHT GUARD associated with mouth guards for medical
7 purposes.

8

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 24:**

10 Admitted.

11

12 **REQUEST FOR ADMISSION NO. 25:**

13 Admit that the word “bruxer” is a term of art used in the dental industry
14 to refer to a person who grinds their teeth.

15

16 **RESPONSE TO REQUEST FOR ADMISSION NO. 25:**

17 Admitted.

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19 **REQUEST FOR ADMISSION NO. 26:**

20 Admit that the word “bruxer” is a term of art used in the dental industry
21 to refer to a type of dental product.

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23 **RESPONSE TO REQUEST FOR ADMISSION NO. 26:**

24 Denied.

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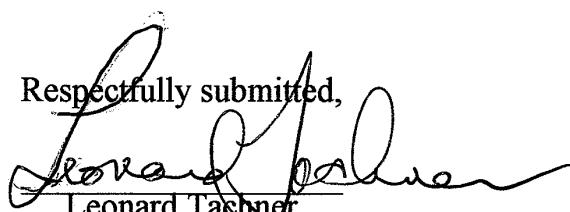
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Respectfully submitted,


Leonard Tachner

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Dated: October 11, 2012

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PROOF OF SERVICE

I am a resident of the state of California, I am over the age of 18 years, and I am not a party to this lawsuit. My business address is 17961 Sky Park Circle, Suite 38-E, Irvine, California 92614. On October 11, 2012, I served the following document(s) in the manner indicated:

1. PLAINTIFF'S/COUNTERCLAIM-DEFENDANT RESPONSES
TO DEFENDANT'S FIRST SET OF REQUESTS FOR
ADMISSIONS (NOS. 1-26)

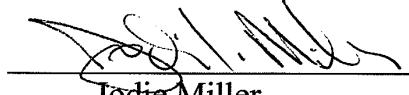
- via electronic means by the Court's electronic filing system CM/ECF.
- by placing the document(s) listed above in a sealed envelope to the person at the address set forth below by postage prepaid United States First Class United States mail on the same date set out below.

Lynda J. Zadra-Symes
Jeffrey L. Van Hoosier
Knobbe, Martens, Olson & Bear, LLP
2040 Main Street, Fourteenth Floor
Irvine, CA 92614

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed October 11, 2012 at Irvine, California.

By: /s/ Jodie Miller


Jodie Miller

Case No.: SACV11-01309-DOC(ANx)
CERTIFICATE OF SERVICE